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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Letter dated 22 February 1994 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General

On instructions from my Government, I have the honour to transmit to you the reply of the Government of Iraq to the interim report entitled "Situation of human rights in Iraq", prepared by the Special Rapporteur of the Commission on Human Rights, Mr. van der Stoel, and submitted to the General Assembly at its forty-eighth session as document A/48/600 (see annex).

I should be grateful if you would have the text of the present letter and its annex, the reply of the Government of Iraq,* circulated as a document of the forty-eighth session of the General Assembly under agenda item 114 (c).

(Signed) Nizar HAMDOON
Ambassador
Permanent Representative

* See also A/C.3/47/2 of 7 October 1992 and S/24388 of 6 August 1992.

ANNEX

Reply of the Government of Iraq to the interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Iraq

I. INTRODUCTION

1. The relevant Iraqi authorities have considered the interim report submitted by the Special Rapporteur on the situation of human rights in Iraq to the General Assembly at its forty-eighth session (A/48/600). They have found it, as they found his previous reports, to be full of fallacies and unsupported allegations and to constitute a repetition of previous charges that lack all credibility.

2. On detailed examination of the report, any observant reader may note the following:

(a) The fact that the Special Rapporteur focuses on what he calls "the situation in the southern marsh area" and devotes to it some 15 pages of his 30-page report provides cogent proof that he continues to be a major participant in the unjust campaigns of which Iraq is from time to time the object. He is performing the political role assigned to him of fabricating crises and allegations in order to prepare the climate for foreign intervention in Iraq's affairs. He focuses on the marsh area for no other reason than to promote an attempt to impose there a situation similar to that obtaining in northern Iraq, so as to advance the schemes aimed at the partition of the country.

(b) Similarly, at a time such as this, the Special Rapporteur focuses on the allegation that the Government of Iraq is responsible for the tragic health and nutritional condition of Iraqi citizens and gives an illogical and superficial interpretation of such responsibility in a shameless attempt to distract attention from the increasing understanding among countries of Iraq's position, which is to call upon the Security Council to meet its obligations to Iraq by lifting the embargo, given that Iraq has discharged its obligations under Security Council resolution 687 (1991). In proceeding in this manner, Mr. van der Stoel once again shows himself to be adopting the political position required of him, apparently in order to prevent any serious attempt by the international community to bring pressure to bear for the lifting of the economic embargo.

(c) The fact that the Special Rapporteur, for the framing of such serious allegations and in obtaining the information that he relays, has relied on unknown sources that he is content to refer to as "persons of interest" and "a wide range of persons" in a number of capitals such as Tehran, London and The Hague, makes such information seriously suspect. These sources must surely be none other than the parties that are known for their hostility to Iraq and those elements that call themselves "the Iraqi opposition" and which, in giving currency to such false information, have the goal of harming Iraq and achieving purely political objectives that bear no proximate or remote relation to human rights.

(d) Mr. van der Stoel's dismissal of the positions taken by Iraq and of its explanations and his attempts to refute them in such a provocative manner, as well as his tendency to accept blindly all of the accusations he obtains from his "sources", confirm in a manner that leaves no room for doubt the statements made by Iraq on a number of occasions to the effect that van der Stoel is not impartial or objective but is biased and is exceeding the mandate entrusted to him as laid down in the relevant resolutions of the Commission on Human Rights.

(e) Given the "humanitarian mandate" entrusted to him, the Special Rapporteur would be better advised to cooperate with the Iraqi Government in the promotion and protection of human rights in Iraq rather than to resort to incitement and denunciation.

(f) The Special Rapporteur frequently resorts to the use of such terms as "civilian settlements" and "indigenous population", terms that have only ever been used in the history of Iraq, whether in the political or economic fields, as part of the colonialist political lexicon. The purpose of using them now is to create spurious and delusive concepts with a view to their future consequences for the unity of Iraq and of its people. Their use by the Special Rapporteur is intentional and offensive, and it ultimately has the same goal. In calling attention to the underlying meaning of these terms, Iraq requests other countries not to adopt them or to view them as objective concepts since they are subjective and politically tendentious.

3. The reports of special rapporteurs cannot in general be regarded as embodying definitively established facts so much as they are documents containing information that requires scrutiny and confirmation. Their sources are not official documents that are internationally endorsed, and we therefore believe that they always require sustained examination and scrutiny.

II. THE SITUATION IN THE MARSHES

A. Violations of civil rights

4. In paragraph 13 of his report, the Special Rapporteur states that he has received allegations of "serious and widespread violations of almost all civil rights".

5. This allegation lacks precision and credibility, as do many of the allegations made against Iraq. The Government of Iraq has responded to such allegations in previous notes, and it has stated that the Iraqi government authorities concerned are carrying out their duty to apply the proper laws and procedures in the pursuit of outlaws, deserters from military service and infiltrators into Iraqi territory from Iran. These are committing all manner of crimes, organized and otherwise, such as burglary, murder and sabotage, and this is prejudicial to the Iraqi people and to its security and safety. The performance by the Iraqi authorities concerned of their functions in the maintenance of the security and stability of the area is of the essence of the powers and duties entrusted to them and it cannot in any way be regarded as being in violation of civil rights, as the Special Rapporteur alleges.

Bombardment of "civilian settlements" and arbitrary killings

6. The Special Rapporteur claims that he has been in "regular receipt of allegations through second and third parties concerning bombardments in the region", and that he has received "numerous and consistent testimonies from refugees who arrived in south-western Iran in July and August 1993", claiming that they had been "subjected to indiscriminate bombardments" (para. 16), and that he has received allegations relating to the "bombardment of civilian settlements", the "death of large numbers of innocent persons, including women, children and the elderly" and "continuing ... assaults by means of ground-to-ground artillery" (para. 14).

7. We should like to state that the Government of Iraq is astonished by the fact that the Special Rapporteur should receive reports containing allegations of bombardments in the marsh area from "second or third parties" and that he should claim to have obtained video tapes and photographs "submitted by non-governmental groups" of the destruction of various villages in recent months. This confirms that for much of the material contained in his reports, the Special Rapporteur has relied on allegations given currency and provided to him by parties hostile to Iraq, whether States or individuals, without giving himself the trouble of verifying the information and reports in question or investigating whether the video tapes and photographs had been fabricated by political groups and parties hostile to Iraq and linked with foreign Powers seeking to cause confusion and to injure Iraq's reputation. The Government of Iraq has stated in the past, and it states once more, that it is most anxious to ensure all the prerequisites of security and protection to all of its citizens in accordance with its internal laws and its international obligations and to do so in such a way as to safeguard civil, political, economic, social and cultural rights in all parts of Iraq. The legal measures taken by the Iraqi authorities concerned pertain to the responsibility of the Iraqi State, one of whose fundamental national duties is to maintain security and stability in the country.

8. In another respect, no one who follows the situation can fail to know that there are neighbouring States (Iran) that have constantly intervened in Iraq's internal affairs, particularly in such border zones as the marsh area, and that it is they that are supplying these outlaws with weapons and explosives with a view to causing problems for Iraq and undermining the situation inside the country. We refer you to the letter from the Minister for Foreign Affairs of Iraq addressed to the Secretary-General of the United Nations contained in the annex to document A/C.3/47/2 of 7 October 1992.

9. It should be recalled that in 1991 the Government of Iraq declared a comprehensive general amnesty for deserters from military service and participants in the disturbances other than those who had committed premeditated murder or rape and that the amnesty applied to all Iraqis whether in northern, southern or central Iraq. Many of these returned to their normal lives. The remainder, however, were those who had taken to sabotage and highway robbery as a way of life, which indicates a deliberate intent to commit crimes.

10. The claim that large numbers of innocent people were killed, including women, children and the elderly, is an irresponsible and superficial

generalization and an example of random speculation. It is, in reality, the actions of these saboteurs and criminals that are disturbing the security and stability of the area, and it is their acts of robbery and murder and their destruction of homes and property that are endangering the lives of innocent people, particularly in the areas where it is difficult for the government authorities concerned to maintain a presence because of the natural features of the terrain. The State has therefore had the duty from time to time to pursue the criminal elements in order to maintain security and ensure the safety of citizens.

11. The allegation of the Special Rapporteur concerning "the use of 'chemical weapons' during attacks in the region of Um al-Ghag and the Abu Zergi marshlands near Basra at the end of September 1993" (para. 21) is based on falsehood and imprecision. The inspection team of nine experts under the leadership of Roger Hill of Australia that visited Iraq at the end of November 1993 to investigate allegations of the use by Iraq of chemical weapons issued statements that refute this allegation, and it found no evidence that chemical weapons had been used by Iraq. Moreover, the Special Rapporteur himself states in his report that no "corroborative evidence" supporting these allegations was found. This proves that the allegation he makes is a pure calumny and has no basis in fact and that its purpose is to injure the reputation of Iraq.

12. We should like to point out that the allegations reported by the Special Rapporteur in paragraph 22 of his report concerning "arbitrary killings and extrajudicial executions of persons either in the southern marsh area or taken from the area" lack credibility and contain many falsehoods. This is because the marsh area, and particularly the area that parallels the boundary with Iran, can be entered by saboteur elements which, as has been said, engage in robbery and plunder of the inhabitants of the area and endanger the lives of citizens.

13. The Decree of the Revolution Command Council of 21 December 1992 has the goal of ensuring the safety and security of citizens in all areas of Iraq through the voluntary efforts of individuals from each area who undertake to protect its security and the safety of its residents from attack by injurious or saboteur elements, particularly where police forces are inadequate, at specific times and in difficult circumstances such as those Iraq is undergoing. The Government is anxious to protect the security, lives and property of its citizens, particularly in the current exceptional situation that requires extraordinary efforts to halt crimes against the security of the country and of citizens and the theft of their property in pursuit of unlawful personal interests that take no account of the critical economic circumstances in which the country finds itself. It is, of course, the duty of these volunteers to protect citizens and not to kill them or harm them, and they perform their task within the framework of well-defined controls that are subject to judicial supervision and not free of restrictions, as depicted by the Special Rapporteur. Such measures are adopted, moreover, in many countries passing through difficult and exceptional circumstances.

Arbitrary arrest and detention, and due process of law

14. The Special Rapporteur states that "reports indicate that the people of the southern marsh area live in constant fear of arbitrary arrest and detention"

(para. 24) and that "all forces of governmental administration are responsible for arbitrary arrests and detentions" (para. 25). He further states that "military patrols are said to move in and out of the marsh areas effecting arrests of civilians when and as they feel inclined", and he claims that the basis of arrest is the accusation of being a "criminal", "deserter" or "infiltrator" and, in the case of women, a "smuggler" (para. 25).

15. Most regrettably, these statements do no more than add to the heaping up of accusations against the Iraqi Government that are false like many others. We should like to state that the Government of Iraq adheres diligently to the principles of justice, legality and respect for human rights and to their embodiment in its internal laws and statutes. Article 22 (b) of the Iraqi Constitution unequivocally prohibits the arrest, detention, imprisonment or search of any person other than in accordance with the law. Accordingly, article 92 of the Code of Criminal Procedure stipulates that no person may be arrested or detained other than by order of a magistrate or a court or in the circumstances permitted by law.

16. The principle that prohibits arbitrary arrest is also reflected in the Penal Code, and its article 322 penalizes with imprisonment for a period of not more than seven years any official or employee in public service who arrests, holds or detains any person in circumstances other than those laid down by law. Further, article 333 of the Penal Code stipulates that any official shall be punished who, in the exercise of his office, engages in the torture of a suspect or witness in order to induce him to confess to a crime or to make statements or give information. The use of force or intimidation is also regarded as tantamount to torture.

17. In confirmation of the provision in Iraqi legislation for a mechanism to guarantee the right to freedom and the absence of arbitrary arrest, the Ministry of Justice issued Instruction No. 4 of 1988, published in the Official Gazette for 11 July 1988, requiring those engaged in an inquiry to notify the investigating magistrate of any reports reaching them concerning the commission of a felony or misdemeanour. It also requires the Office of the Public Prosecutor to undertake two supervisory visits to each police station to inspect the premises and ascertain that no detainees are being held without an arrest order issued by a competent magistrate or court and that health standards are being met and to hear any complaints by persons in detention and follow up any infractions found in accordance with the law.

18. The Special Rapporteur states that the "Marsh Arabs ... have never had identification cards" (para. 26). We should like to state that this claim is lacking in truth and precision, because all citizens of Iraq, children and adults alike, are issued with identification cards.

19. An allegation is made concerning "bribes required of persons to obtain release or protection", and it is said that "bribes in many thousands of Iraqi dinars, and paid to all levels of government forces, have been reported". We should like to state that this allegation involves many falsehoods, does a great disservice to Iraq's reputation and casts doubt on the fairness of the State apparatus. The Special Rapporteur would have been better advised to have

scrutinized the information and allegations reaching him more closely before making charges against the State and its organs.

Forced displacement

20. In paragraphs 31 and 32 of his report, the Special Rapporteur states that "the effect of Government of Iraq actions in the southern marsh area is to force the relocation of the inhabitants from their traditional and ancestral marsh homeland to the urban centres in and around the marshes". Reference is also made to "the destruction of the environment", and it is said that "denying access to food and health care in the marsh area similarly forces Marsh Arabs to move". The Special Rapporteur also states that "the fundamental impetus for the flight of refugees into Iran this past summer was the drying of the marshes together with a general fear of the governmental authorities".

21. We should like to state that the real reason for the flight of refugees to Iran was that some neighbouring States and their agents in the area are endeavouring to create a climate of instability and insecurity by spreading tendentious rumours among the people that are causing some of them to leave their homes. These agents also force people to move in order to achieve political goals. This is well known, and the incidents that followed the war of aggression in the Gulf cannot be far from our minds. Moreover, the impact the aggression has had on Iraq and the adverse effects of the economic embargo imposed more than three years ago, whose consequences continue to make themselves felt to this day, have deeply affected the economic and social lives of citizens in all parts of the country and particularly those in the marsh area because of the already difficult character of life there. Despite the difficult economic circumstances in which the country finds itself, the Government of Iraq has in recent years endeavoured to improve the living conditions of the marsh Arabs by offering them the possibility of voluntary relocation to nearby population centres where health and educational services are available and the difficulties they face may be mitigated.

B. Violations of economic rights

22. In paragraph 33 of his report, the Special Rapporteur states that Iraq is obliged, according to article 2 of the International Covenant on Economic, Social and Cultural Rights, to ensure the rights to "adequate food, clothing and housing" and "the highest attainable standard of physical and mental health".

23. In this connection, we should like to state that the Government of Iraq is fully aware of its obligations. However, the sufferings of the Iraqi people, whether in northern, central or southern Iraq and whether in the east or west of the country, have been caused by the imposition and maintenance of the economic embargo following the events of August 1990. As a result, Iraq has been experiencing abnormal circumstances, such as high prices and adverse health and living conditions, whose impact has been felt in the lives of citizens in all parts of Iraq. There has also been the interference of the States that undertook the aggression against Iraq in the internal affairs of the country.

24. The Special Rapporteur states that there are obstacles that prevent those living in the marshes from benefiting from the ration-card system, such as the difficulty of obtaining or renewing a ration card because some do not have the necessary identification card (para. 34). There is absolutely no truth to this allegation, and all the inhabitants of Iraq, without distinction, obtain their rations on the basis of the ration-card system. The distribution of foodstuffs and medical supplies is carried out by agents of the Ministry of Trade who are deployed everywhere and who undertake to deliver rations to citizens so that their minimum requirements may be met in the circumstances created by the unjust economic embargo.

25. Hospitals are supplied with the few essential drugs available for free distribution to patients. For the chronically ill, medication is distributed on the basis of their health record. It should be recalled that the Iraqi authorities have in the past invited world humanitarian and parliamentarian organizations and the press to visit the area and to see for themselves that these allegations are untrue.

26. The allegation concerning the deliberate poisoning of the marshes (para. 40) is a pure fabrication for which the Special Rapporteur can find no basis. Furthermore, we do not see the connection, mentioned by the Special Rapporteur in paragraph 40 of his report, between Iraq's obligations under Security Council resolutions 687 (1991) and 688 (1991) and action to halt the discharge into the marshes of "various poisonous and dangerous chemical substances" and of raw sewage resulting from the destruction by the Coalition States during their aggression against Iraq of urban water treatment facilities, from the fact that those facilities have not yet been completely rebuilt or from the fact that planned facilities have not been built because of the well-known circumstances created by the embargo.

C. Violations of social and cultural rights

27. In this domain, the Special Rapporteur's bad faith leads him to posit that the Marsh Arabs are both a minority in the sense of article 27 of the International Covenant on Civil and Political Rights or the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and that they constitute an indigenous people entitled to the rights stipulated in article 1 of the Covenant on Economic, Social and Cultural Rights (para. 43). Here we should like to state the following:

(a) Article 27 of the International Covenant on Civil and Political Rights refers to "ethnic, religious or linguistic minorities". This description does not apply to the inhabitants of the marshes since they are Arab Muslims who are not distinct from their fellow Iraqis in any of these respects. If the Special Rapporteur is referring to the difference in religious rites, then it seems that he is unaware of the true state of affairs with respect to the cultural, confessional and religious situation in Iraq as a whole. All the rites of Islam are based on a single creed, namely Islam, and the linkage made by the Special Rapporteur therefore has no basis and lacks credibility.

(b) The Special Rapporteur's characterization of the inhabitants of the marshes as an "indigenous people" can only be explained by his ignorance of the history of Iraqi society and of its formation over the centuries in terms of nationality, religion and heritage and by his desire to create a climate conducive to the dismemberment of Iraq and the creation of a situation in the south similar to that prevailing in the north. His repeated attempts to introduce the use of this description are preposterous, and we do not know on what he bases himself in his pronouncements. It is well known that the inhabitants of the area are members of Arab tribes that have extensions throughout Iraq, in the Arabian Peninsula and in Yemen, and their origins and descent are known. Accordingly, those of the Iraqi people who are in the marshlands do not receive any discriminatory treatment, either in services or in the distribution of rations of food and medicine, and their situation is the same as that of all other members of the Iraqi people. Many foreign personalities and journalists who have visited the area have testified that this is indeed the policy, and the true situation has been reported in their countries and in their newspapers.

(c) Although the Special Rapporteur is delighted to refer to those provisions of international conventions that support his own views, he ignores all those that do not. Article 8, paragraph 4, of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities states that "Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States". Nevertheless, we can see that all of the goals the Special Rapporteur seeks to achieve have the primary aim of prejudicing Iraq's territorial integrity and violating its political independence.

28. The Special Rapporteur accuses Iraq of what he calls "extensive destruction of the marshes" through a deliberate policy of "the drying of the marshes", and he attempts to link all of the irrigation and agricultural projects aimed at developing and expanding the region with this objective (para. 47).

29. Iraq has previously stated its position with regard to these allegations and has called attention to the character of the objectives that underlie the raising of such matters. This is primarily intended to halt the development process in Iraq and to prevent the country from finding the substitutes necessary to cope with the effects of the unjust economic embargo imposed on it more than three years ago. In this connection, we refer to the letter dated 6 August 1992 from the Minister for Foreign Affairs of Iraq addressed to the Secretary-General of the United Nations (S/24388) and the letter dated 5 October 1992 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General (A/C.3/47/2).

30. For purposes of emphasis, we here briefly repeat the explanation given of the dimensions and objectives of the projects in question. The marshlands are natural lowlands located on the lower reaches of the rivers of the southern region, and the waters of the Tigris and Euphrates rivers used to flow into them in the flood seasons and thus raise water levels. Similarly, water levels would fall in low-water seasons and as a result of high rates of surface evaporation in the summer season.

31. In the ongoing development of the exploitation of water resources and of improved water utilization in the country, numerous barrages and reservoirs were built to prevent water loss and avert the danger of flooding. Water use increased greatly as a result of ongoing population growth and an increase in the number of enterprises making use of water. This was also accompanied by extensive regulation and exploitation of the waters of the Tigris and Euphrates outside the country, particularly in the Euphrates Basin where the upstream States constructed large storage dams and established many irrigation projects. This resulted in a major reduction in the quantity of water reaching the country, and inflows to the Euphrates have fallen from an average of 30 billion cubic metres a year to 9 billion. This has consequently limited the flow of water into the marshes, so that in recent years there has not been sufficient to meet agricultural and non-agricultural needs.

32. The following measures have been taken with a view to improving water use:

(a) Comprehensive planning has been under way since the 1970s for the management of water resources in such a way as to ensure optimum use by means of programmes for the construction of dams, reservoirs and major weirs and for land reclamation and the dredging of the lower reaches of the rivers in order to reduce water wastage. The diminution of the country's water resources has required the speedy implementation of the necessary measures to reduce the current waste of water by:

(i) Dredging the lower reaches of the rivers in the southern region and confining their course in order to prevent the flow of water into water meadows unutilized;

(ii) Construction of canals fed by such water meadows and use of the water for the purpose of bringing new land under cultivation by the inhabitants of the area for such strategic crops as wheat in order to secure the food that they need, particularly in the circumstances created by the unjust embargo imposed on the country;

(iii) Construction of major regulating barrages on the rivers in order to facilitate the establishment of quotas and the proper distribution of water to agricultural enterprises and so as to ensure the water levels necessary for irrigation purposes.

(b) Over the years, Iraq has experienced an evident decrease in the quantity of its water because of the reduction in amounts flowing into the country and a fall in water quality as a result of the construction of storage and irrigation projects and increased reclamation activity in the upstream States. This has had clear repercussions on the southern region in particular. The salinity of the water reaching the area has exceeded internationally and locally permitted levels several times over, and it has been at a level of 7,000 parts per million while water fit for human consumption is required at worst to have a salinity level of no more than 1,500 parts per million. The following measures therefore became necessary:

(i) To reduce the amount of water flowing into the water meadows in order to reduce the evaporation losses that contribute to the deterioration in water quality in the southern area resulting from the flow of water that is highly saline because of evaporation into the rivers in the low-water seasons;

(ii) To complete the Saddam river project, which is the main drain for the land situated between the rivers, and to link it with the Arabian Gulf in order to prevent its saline water from flowing into the water meadows and thence into the rivers of the southern region and causing a deterioration in water quality, particularly in the Basra Governorate. It should be recalled that these are old reclamation projects for which the feasibility studies were conducted by reputable foreign companies and experts. (In this connection, we refer to the document entitled "Irrigation projects in southern Iraq and the right to development" that was submitted by the Government of Iraq to the Commission on Human Rights at its fiftieth session.)

(c) The above measures have been of great benefit to the entire country, and particularly to water users in the southern region. The latter saw no improvement in water quality until after the measures had been put into effect, when water salinity returned to permissible levels. Thousands of hectares of land were also brought into use for agricultural purposes. The reduction of water wastage is a major objective that will have to be achieved sooner or later in the light of the continued diminution in the quantities of water entering the country.

III. THE SITUATION IN GENERAL

33. The Special Rapporteur holds the Government of Iraq responsible for the deteriorating health and nutritional situation in Iraq as a result of the circumstances created by the unjust economic embargo imposed on the Iraqi people more than three years ago, because of its refusal to comply with Security Council resolutions 706 (1991) and 712 (1991) (para. 67).

34. In this context, we should like to state that these resolutions are of a political character and that they have no substantive connection with the objectives for which the Special Rapporteur believes they were adopted. Everyone is aware that the two resolutions in question impose political restrictions for purposes that bear no relation to human rights and are in conflict with the principle of the sovereignty of Iraq and its people over the natural resources of the country, a principle that is firmly established in international law. We recall in this connection that article 1, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights and the corresponding article of the International Covenant on Civil and Political Rights stipulate that "All peoples may, for their own ends, freely dispose of their natural wealth and resources ...". It is strange that the Special Rapporteur should focus on holding Iraq responsible at a time when States are beginning to show increased understanding of Iraq's position, which is to urge the Security Council to meet its obligations by lifting the economic embargo in its entirety, given that Iraq has discharged its obligations under Security

Council resolution 687 (1990). Here Mr. van der Stoel again reveals himself as embracing the political position required of him in order to prevent any serious attempt by the international community to bring pressure to bear for the lifting of the economic embargo.

35. The Special Rapporteur's allegation that the Government of Iraq is pursuing a policy of discrimination between one region of Iraq and another in the distribution of rations of foodstuffs and medicines (para. 68) is a mere fabrication that has no basis in fact. The enormous effort being made by the Iraqi authorities to distribute to all members of the Iraqi people without distinction the few resources that are available because of the unjust embargo is sufficient to refute such accusations. Many international non-governmental organizations have commended this system and its success and fairness.

36. The Special Rapporteur accuses the Government of Iraq of having reduced the international humanitarian assistance available throughout the country and particularly in the south (para. 67). In this connection, we emphasize that the United Nations Inter-Agency Humanitarian Programme in Iraq (UNIAHPI) has thus far been unable to demonstrate that it is succeeding in providing the necessary assistance to the Iraqi people. The figures provided by UNIAHPI to the Government of Iraq indicate that the Programme lacks balance and fairness in implementing priorities because of the pressures exercised by donor States for the allocation of the assistance that they provide to it. Moreover, in paragraph 67 of his report, the Special Rapporteur admits that the Programme is underfunded by almost $360 million. How can the Special Rapporteur regard the Programme as vital for the provision of humanitarian assistance to the Iraqi people when it is so greatly underfunded? Nevertheless, the Government of Iraq has, for its part, taken the initiative of renewing the residence visas of all the officials of the Programme on a regular basis since the expiration of the Memorandum of Understanding on 31 March 1993. The situation is the same with regard to entry visas, and Iraq has granted hundreds of such visas to UNIAHPI officials.

IV. THE SITUATION IN THE NORTHERN KURDISH TERRITORY

37. The Government of Iraq has already stated on more than one occasion that the Kurdish area in northern Iraq is under the control of Coalition forces and Kurdish militias. This is to be regarded as a violation of Iraq's sovereignty over its territory and as open interference in its internal affairs. The central Government has no de facto administrative or military presence in the region.

38. The Special Rapporteur repeats his allegation that the Iraqi Government is maintaining an internal economic blockade against the northern region. This allegation is untrue, and it deliberately ignores the facts. The Government continues to send food rations to the northern governorates as to the other governorates of Iraq but, at the same time, it is unable to ensure that the rations will reach the beneficiaries for the reasons given above. It is the militias that control the region that receive and dispose of the rations, and they either sell them to the inhabitants at exorbitant prices or smuggle them into the neighbouring countries.

39. In paragraph 70 of the report, it is stated that "the collapse of certain basic infrastructure owing to non-repair or interference, or the coming of a harsh winter, would result in considerable suffering" and that this is "a potential which the Special Rapporteur believes the Government is under an obligation to confront".

40. It appears from this paragraph that the Special Rapporteur does not grasp the true state of affairs in the area. The intervention or repair for which he calls is not possible for the reasons given above. Moreover, the elements that control the region with the support of the Coalition forces have, in a spirit of irresponsibility, dismantled a large number of vital service installations and utilities and high-tension electricity pylons and have severed electricity cables and sold them in neighbouring countries for their own narrow purposes. This has caused disruption in the electricity supply to many areas.

41. In bringing accusations without ascertaining their truth or credibility, the Special Rapporteur is giving expression to his own prejudices against the Government of Iraq. His statements that the Government of Iraq has the object of imposing collective punishment against the inhabitants of the northern region and that it has withdrawn basic social services, including pensions (para. 71), contain much fabrication, exaggeration and distortion of the facts. The Government has for long stressed the fact that, regardless of the circumstances, the Kurdish people is part of the Iraqi people. When it learns of such accusations, it becomes more than ever convinced that Mr. van der Stoel is involved in the political campaign to promote attempts at the geographical dismemberment of Iraq. In connection with the alleged withdrawal of social services such as pension payments, we should like to state that the Government Iraq has established two centres for the disbursement of pensions in the northern governorates.

42. The fabrications that the Special Rapporteur continues to repeat to the effect that the Iraqi authorities have launched armed attacks against the northern region (para. 74) fall within the scope of his previous attempts to injure Iraq's reputation. The Government of Iraq has launched no armed attacks against the region. We should like to state in this connection that there are many tribes inhabiting the area and there are frequent disputes among them involving land, water, pasture or vendettas. There are sometimes outbreaks of fighting among them, which are generally resolved in the tribal framework. It should also be recalled that these areas are not under the control of the central authority of the State and that this prevents the intervention of the central authority in order to mediate in the resolution of such tribal conflicts. There are also disputes between the warring Kurdish militias fostered by certain foreign States, and these often develop into fierce battles between their members such as those that took place at the end of December 1993 at Irbil, Sulaymaniyah and Dohuk, when hundreds of innocent members of our Kurdish people were killed.

43. The Government of Iraq strongly denies that it has any responsibility for the "incidents of a security nature" that have taken place in the region and which the Special Rapporteur mentions in paragraph 75 of his report. He ignores the fact that there are numerous parties and countries that are endeavouring to

disparage Iraq and injure its reputation and that do not hesitate to commit criminal acts and then ascribe them to the Iraqi Government.

44. The intervention of the Special Rapporteur in assessing the attitude of the Government of Iraq towards the United Nations Inter-Agency Humanitarian Programme in Iraq (para. 77) is in contravention of the working rules that govern the relationship between the Government of Iraq and the Programme. The Special Rapporteur is not authorized by his mandate to give such an assessment, and this clearly shows that his objective is to distort the true state of affairs and to make charges against Iraq without any legal justification.

45. In order to clarify the attitude of the Government of Iraq towards the Programme in a general manner, we should like to point out that since the inauguration of the Programme on 18 April 1991 Iraq has made available all of the necessary administrative facilities for the implementation of United Nations activities. It has done so in a desire to cooperate closely with the United Nations in order to meet the increasing needs of the civilian population, there having been acute shortages since the imposition of the unjust embargo on Iraq on 6 August 1990. Despite the non-renewal of the Memorandum of Understanding governing the obligations of the two parties with respect to the Programme and to United Nations projects in Iraq, Iraq has taken the initiative of renewing the residence visas of all Programme officials on a regular basis since the expiration of the last Memorandum of Understanding on 31 March 1993. The situation is the same with respect to entry visas, and Iraq has granted hundreds of such visas to Programme officials.

46. The presence of certain United Nations officials has constituted an additional burden on Iraq. Instead of directing their efforts at mitigating the sufferings of the Iraqi people resulting from the embargo, which is supposed to be the reason for their presence in Iraq, some have resorted to committing violations and offences in which they have been caught in the act, which are tantamount to economic sabotage and in respect of which they cannot therefore be regarded as protected by immunity. These offences include the smuggling of antiquities, gold jewellery, medicines, carpets and rare works of art.

47. With regard to Iraqi financial contributions in local currency, it should be said that Iraq has met part of these obligations in the hope that the Programme would fulfil its commitment to provide for the minimum humanitarian needs of the civilian population. This has not yet happened.

48. The United Nations Programme in Iraq has as yet been unable to demonstrate success in providing the necessary assistance to the Iraqi people. The figures provided by the Programme to the Government of Iraq indicate that the Programme lacks balance, fairness and competence in implementing priorities because of the pressures brought to bear by donor States for the allocation of the assistance they provide to the Programme in such a way as to achieve their political goals of promoting efforts to dismember Iraq.

V. COMMENTS ON THE RECOMMENDATIONS

49. We should like to comment on the recommendations made by the Special Rapporteur in part IV of his report in the order in which they are made there:

(a) There are no military activities in the marsh area such as those the Special Rapporteur recommends should cease. There may from time to time be regular and limited activities that are undertaken by the Iraqi authorities concerned in order to apply the proper laws and procedures for the pursuit of outlaws, deserters from military service and infiltrators into Iraqi territory from neighbouring countries, particularly in that part of the marsh area close to Iran. These commit all manner of crimes that are prejudicial to the Iraqi people and its security and safety, and this requires the competent authorities to perform their duty of maintaining security and stability in the region.

(b) The Government of Iraq rejects outright the idea of stationing human rights monitors in Iraq, since it is blatantly inconsistent with the concepts of sovereignty, independence and non-interference in domestic jurisdiction. By the stationing of such observers, it appears that the Special Rapporteur is seeking something similar to the political agents of the colonialist Powers, and he entirely overlooks the authority of the Iraqi State to exercise its powers in sovereignty and independence. The Special Rapporteur has tried to find a basis in international law for his idea by reference to Security Council resolution 688 (1991). In order to justify his idea, he has tried to devise a mechanism for the resolution similar to those for assessing the extent of Iraq's compliance with other resolutions, such as the mechanism for dealing with weapons of mass destruction. However, this idea has no basis in Security Council resolution 688 (1991) itself and, in this respect, we should like to state as follows:

(i) The Security Council alone has the authority to create mechanisms for the implementation of its resolutions, and no other United Nations organ may devise a mechanism for the implementation of a Security Council resolution. No measures may be inferred that are not embodied in the resolution itself, and if they are it is to be regarded as trespassing on the powers of the Council.

(ii) The attempt by the Special Rapporteur to find some connection between the situation of human rights in Iraq and the issue of the maintenance of peace and security in the region is an encroachment on the powers of the Security Council. Resolution 688 (1991) itself refutes any such connection, since its third preambular paragraph considers that the flows of refugees across international frontiers constitute cross-border incursions and it is they that threaten international peace and security in the region. In other words, it is the flow of refugees that threatens peace and not the human rights situation in itself. It is well known that the flow of refugees basically came to a halt a short time before the adoption of resolution 688 (1991). Therefore, the connection that the Special Rapporteur seeks to establish between the situation of human rights in Iraq and the maintenance of peace in the region did not exist at the time resolution 688 (1991) was adopted and, all the more so, does not exist now.

(iii) The second preambular paragraph of Security Council resolution 688 (1991) specifically recalls the provisions of Article 2, paragraph 7, of the Charter of the United Nations, namely the principle of non-intervention by the United Nations in internal affairs that are regarded as within the domestic jurisdiction of States. This principle was raised in the statements made by a number of representatives in the Security Council in the course of the debate on the resolution. The seventh preambular paragraph of resolution 688 (1991) reaffirms the commitment of all Member States to respect the sovereignty, territorial integrity and political independence of Iraq and of all States in the region. Accordingly, any mechanism for resolution 688 (1991) must abide by the principles of non-interference in the domestic jurisdiction of Iraq and of respect for its independence. When we revert to the Special Rapporteur's ideas for a body of human rights monitors, we find that they are in blatant violation of these two basic principles of the Charter of the United Nations. With the body of monitors, he seeks to create a mechanism for bringing about a new and innovative form of mandate and trusteeship over Iraq, for an unlimited period of time, in the exercise by the State of its domestic jurisdiction.

(iv) The mechanism for monitoring the implementation of resolution 688 (1991) was no more than the request to Iraq to permit international humanitarian organizations to enter its territory in order to provide their assistance. The Security Council also requested the Secretary-General to pursue his humanitarian efforts in Iraq. Accordingly, Iraq concluded with the United Nations representative for humanitarian assistance the Memorandum of Understanding of 11 April 1991 concerning the facilitation of the provision of humanitarian assistance, and this Memorandum of Understanding was renewed. This does not therefore justify the idea of human rights monitors proposed by the Special Rapporteur. Furthermore, Mr. van der Stoel has attempted to compare the situation in Iraq with what is happening in El Salvador and Cambodia, for example, in order to justify his idea. This has, however, no basis in reality or in law, since the observer operations in those cases were instituted following civil war conditions and as a result of special agreements signed by the parties to the conflict.

(c) With regard to the Special Rapporteur's recommendation that the Government of Iraq should cooperate in facilitating an investigation to be conducted by the United Nations Special Commission concerning the allegations of "chemical weapons" use in southern Iraq, we would like to state that Iraq, in an endeavour to uncover the truth and thwart the aims of this malicious campaign, has cooperated fully with the Special Commission. The Special Commission has completed its inquiries, and its official spokesman has stated that it found no evidence of such alleged use.

(d) With regard to the allegation of the Special Rapporteur that the Government of Iraq is engaged in actions "which may cause irreparable damage to the southern marsh environment", we should like to refer to paragraphs 28 to 32 above, where a complete picture is given of the true state of affairs there

definitively refuting allegations that are intended to halt the development process in the area and cause it to remain backward and to contain Iraq's sustained efforts to overcome the impact of the embargo imposed on it more than three years ago. The Government of Iraq is aware of its obligations to the inhabitants of the area, and the many foreign journalists and foreign personalities who have visited the marsh area have seen for themselves the close relations that obtain between the inhabitants and the Iraqi authorities.

(f) Given its concern to cooperate closely with the United Nations in meeting the growing needs of a civilian population that has been subjected to acute shortages since the imposition of the unjust embargo on the country on 6 August 1990, the Government of Iraq has provided all necessary administrative facilities for the implementation of United Nations humanitarian activities since the Programme began on 18 April 1991. Despite the fact that the Memorandum of Understanding governing the obligations of the two parties was not renewed, Iraq has taken the initiative of renewing the residence permits of all Programme officials on a regular basis since the expiry of the second Memorandum of Understanding on 31 March 1993.

(g) On more than one occasion, Iraq has stated that there is no "internal embargo" of any kind. The Iraqi authorities assiduously treat all members of the Iraqi people indiscriminately and are anxious to distribute what few food and medical rations are available because of the circumstances created by the economic embargo against them. Despite the fact that the northern region is not under their administrative and military control, they nevertheless make a serious effort to deliver rations to the northern governorates as to the other governorates. They are, however, unable to ensure the arrival of the rations in a proper manner because of the control exercised by the militias over the area, and it is these militias that take delivery of the rations and dispose of them and either sell them to residents at exorbitant prices or smuggle them into the neighbouring countries.

(h) The allegation that the Iraqi authorities are shelling the villages and communities of the northern region is a mere fabrication that has no basis in fact. It seems that the Special Rapporteur, prompted by bad faith, is seeking to make of the Government of Iraq a party to certain disputes involving land, water, pasture or vendettas between the tribes that inhabit the area. Matters sometimes deteriorate into an outbreak of fighting between them, and in such cases the authorities are unable to intervene in order to settle the disputes because they take place outside the area under their control.

(i) With regard to the Special Rapporteur's demand that the Government of Iraq should make all outstanding payments due to the United Nations Inter-Agency Humanitarian Programme in Iraq, we should like to state that Iraq has met a part of these obligations in the hope that the Programme would fulfil its corresponding obligation of providing for the minimum humanitarian needs of the civilian inhabitants. This has not yet been shown to have happened.

(j) The demand of the Special Rapporteur, at such a time, that Iraq should implement Security Council resolutions 706 (1991) and 712 (1991) regrettably gives cogent proof of the role being played by him in creating a climate conducive to the perpetuation of the economic embargo against Iraq, with all its

concomitant tragedies and woes for the entire Iraqi people, despite the fact that Iraq has discharged its obligations under resolution 687 (1990). We refer in this connection to paragraphs 33 and 34 above.